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MEMO ENDORSED

October 12, 2007

VIA HAND DELIVERY

Hon. Leonard B. Sand
Daniel Patrick Moynihan United States Courthouse
United States Courthouse
500 Pearl St., Room 1650
New York, NY 10007

Re: Structure Probe, Inc. v. EMS Acquisition Corp.,
Civil Action No. 07-3893 (LBS)

Dear Judge Sand:

We represent plaintiff, Structure Probe, Inc. ("SPI"), in this matter. We briefly write to inform the Court of a parallel declaratory judgment action filed by defendant, EMS Acquisition Corp. ("EMS"), in the District Court for the Eastern District of Pennsylvania (*see EMS Acquisition Corp. v. Structure Probe, Inc.*, No. 07-3084 (JG), filed July 27, 2007), in which SPI has filed a pending motion to transfer that case to the Southern District of New York.

By way of background, SPI filed its complaint in this action on May 17, 2007. Months later, on July 27, 2007, EMS filed a declaratory judgment action in the Eastern District of Pennsylvania asking for a judgment that it did not violate the Copyright Act, the Lanham Act, or New York state law unfair competition—the mirror image of SPI's claims before this Court. At this time, there are pending motions before each Court asking it to transfer the case to the other Court, *i.e.*, SPI moved to transfer the Pennsylvania declaratory judgment to New York under the first-to-file rule, and EMS moved to transfer this action to Pennsylvania.

In order to avoid inconsistent decisions by the Southern District of New York and the Eastern District of Pennsylvania, and to avoid the possibility of the case being transferred back-and-forth between District Courts, we believe it makes sense for the Eastern District of Pennsylvania to decide the issue first, which could impact this Court's decision as to whether to transfer the case to Pennsylvania.

in movement
After telephone
conference with
counsel, the
court adjourned
the 10/14/07 motion
pending action '3
the Pa. court
is ordered
by Sand
SPJ
10/16/07

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Hon. Leonard B. Sand
October 12, 2007
Page 2



As the Court has scheduled oral argument on EMS's motions for Thursday, October 18, 2007 at 11:00 am, we respectfully request that the oral argument be postponed until after the Eastern District of Pennsylvania has ruled on SPI's motion to transfer.

Respectfully yours,

Michael J. Freno

cc: Raymond J. Dowd, Esq. (by facsimile and mail)
Joseph Nicholson, Esq.

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